

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSE APPROVING THE REVISED CODE OF ETHICS POLICY, REVISED GIFT POLICY, AND REVISED COUNCIL POLICY 0-15

WHEREAS, the City of San Jose has in accordance with the City Charter implemented a Code of Ethics for Officials and employees of the City which incorporated provisions of the City of San Jose Gift Ordinance; and

WHEREAS, on April 27, 2005 the Blue Ribbon Task Force recommended that a revised Code of Ethics Policy and a revised Gift Policy be approved by the City Council; and

WHEREAS, on June 28, 2005 the City Council approved the revised Code of Ethics Policy and revised Gift Policy; and

WHEREAS, in the *Mayor's 2015 Biennial Review and Recommendation*, the San Jose Board of Fair Campaign and Political Practices was directed to recommend revisions to the Gift Ordinance to better align with the State rules and simplify compliance with conflicting rules; and

WHEREAS, on September 12, 2017, the City Council approved the Auditor's recommendation that the City's Code of Ethics Policy reference the Consolidated Open Government and Ethics Resolution; and

WHEREAS, on October 24, 2017, the City Council approved amending Title 12 of the San Jose Municipal Code to align the Gift Ordinance with the gift regulations under the Political Reform Act, but maintain the fifty-dollar (\$50) gift limit.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSE THAT:

SECTION 1.

The City Council of the City of San Jose hereby approves the revised City of San Jose Code of Ethics Policy attached to this Resolution as Attachment A.

SECTION 2.

The City Council of the City of San Jose hereby approves the revised City of San Jose Gift Policy attached to this Resolution as Attachment B.

SECTION 3.

The City Council of the City of San Jose hereby approves the revised City of San Jose Council Policy 0-15 Code of Ethics for Officials and Employees of the City of San Jose attached to this Resolution as Attachment C.

SECTION 4.

The Memorandum to the Mayor and City Council dated April 10, 2018 from Jennifer Schembri, Director of Employee Relations, is attached hereto to Attachment D and incorporated into this Resolution.

RD:SH:SH
4/10/2018

ADOPTED this ____ day of _____, 2018, by the following vote:

AYES:

NOES:

ABSENT:

DISQUALIFIED:

SAM LICCARDO
Mayor

ATTEST:

TONI J. TABER, CMC
City Clerk

Code of Ethics**1.2.1****PURPOSE AND SCOPE**

In order to best serve the citizens and customers of the City of San Jose, the elected and appointed officials, and employees of the City must act individually and collectively to create a City government that is responsible, fair, honest and open. City employees and officials are expected to demonstrate the highest standards of personal integrity, honesty and conduct in all activities in order to inspire public confidence and trust in City employees.

As stated in the City Charter, "The citizens of San Jose expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

The purpose of this Code of Ethics is to establish policy and guidelines, reflecting expected values and behaviors for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and employees. Individuals employed by the City under contractual agreement must also observe the provisions of this policy for the term of their contract or as the contract may stipulate.

For additional regulations regarding ethics please refer to Title 12 of the San Jose Municipal Code.

POLICY

Elected and appointed officials and employees of the City of San Jose at all levels are guardians of the public trust. City officials and employees are required to be impartial and responsible in the fulfillment of their duties. The citizens and customers of San Jose expect and must receive the highest standard of ethics from all those in public service, regardless of personal consideration.

1. Responsibilities of Public Service

City officials and employees are obligated to uphold the Constitution of the United States and the Constitution of the State of California and to comply with Federal, State, and local laws and City policies. Recognizing the special responsibilities of serving the City and its citizens and customers, City officials and employees are required to maintain the highest standards of integrity and honesty, and they are expected to treat all members of the public and fellow City employees with respect, courtesy, concern and responsiveness. The conduct of City officials and employees in both their official and private affairs should be above reproach to assure that their City position is not used for personal gain.

2. Access to City Government, Services & Resources

The City of San José is committed to open and transparent government and strives to consistently meet the community's expectations by providing excellent service in a positive, timely, and transparent manner. City employees and officials are obligated to serve the public by reaching decisions and conducting activities in full view of the public

Code of Ethics**1.2.1**

in accordance with the Brown Act and the Consolidated Open Government and Ethics Resolution (Resolution #77135).

2.3. General Rule with Respect to Conflicts of Interest

City employees and officials are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an independent and impartial manner.

All City officials, officers and employees are prohibited from making, participation in making, or attempting in any way to use his or her official position to influence a City decision in which the employee knows or has reason to know he or she has a financial interest as defined by law. For example, City employees and officials shall not make personal investments nor maintain any direct or indirect interest in enterprises, activities, or entities which they have or have reason to believe may be involved in decisions or recommendations to be made by them or persons under their supervision, or which may create a conflict between their private interests or may impair their independence of judgment in the accomplishment of their official duties. If, however, persons in the public service have financial interests in matters coming before them, or before the department in which they are employed, they shall remove themselves from making, participating in the making, or seeking to influence any decision regarding such matter. Employees who are designated in the City's Conflict of Interest Code, shall file the appropriate disclosure statements required under State Law.

A conflict of interest may arise when dealing with a current or prospective vendor, supplier, or other business. Please refer to Section 3 below and seek guidance from a supervisor or from the Employee Helpline at 535-8150.

3. Acceptance of Favors, Gratuities and Gifts

City employees and officials shall not accept money or other consideration or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts as defined in the City's Gift Ordinance, gratuities or favors of any kind which be perceived or interpreted as an attempt to influence their actions with respect to City business.

This is just a summary of your obligations, for additional information regarding specific regulations on the acceptance of gifts; please refer to policy 1.2.2, titled Gift Policy in the City Policy Manual. Additionally, if there are any discrepancies between this Gift Policy and Title 12 of the San Jose Municipal Code, Title 12 of the San Jose Municipal Code supersedes.

4. Use of Confidential Information

City employees and officials shall not use confidential information acquired by or available to them in the course of their employment with the City for personal gain or for personal, non-City business related reasons. City employees and officials shall uphold the public's right to know, and in accordance with the Brown Act, uphold the public's

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right to know not only the decisions taken, but also the deliberations which shape public policies. Any employee or official, who is aware of a breach of confidentiality, is expected to bring forth that information to the appropriate officials in a timely manner.

5. Use of City Employment and Facilities for Personal Gain

City employees and officials shall not use City time, City funds or City facilities, equipment or supplies for personal use or personal gain or for campaign related political activities, nor shall they use or attempt to use their position to secure unwarranted privileges or exemptions for themselves or others.

This is just a summary of your obligations, for additional information please refer to policy 1.6.2, titled Personal Use of City Equipment, and 1.7.1, titled Use of E-Mail, Internet Services and Other Electronic Media, in the City Policy Manual.

6. Outside Employment

No employee shall engage in any work, employment or occupation outside City employment, which is detrimental to City service, which prevents or impedes the efficient performance of their duties in City employment, or which is in any way in conflict with their employment with the City. No employee shall engage in any work, employment or occupation outside City employment unless they have notified their department via an Outside Work Permit, and the permit has been approved by the Department Director.

This is just a summary of your obligations, for additional information please refer to policy 1.2.3, titled Outside Employment Policy, in the City Policy Manual.

7. Discussion of Future Employment

All offers or discussions of offers to City employees of future employment outside City service must be reported immediately to the employee's supervisor whenever such discussions occur with, or when such offer is made by, any person, firm or organization presently dealing with the City concerning matters directly within the employee's current areas of decision-making responsibilities. It shall be within the supervisor's discretionary powers to relieve said employee from further decision-making responsibilities in relationship to said person, firm or organization if he or she determines that the offer of employment or discussions of an offer of employment would impair the employee's independence or judgment or could be construed by others as a bid for favorable treatment.

8. Reporting of Improper Activities

The City of San Jose has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with his/her immediate supervisor or another management employee within the employee's department. Employees may also call the Employee Helpline at 535-8150 or the Whistleblower Hotline at 535-8200.

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It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report or participate in investigations into complaints of alleged violations of City policy or local, State or Federal law in retaliation for that reporting or participation. No officer or employee of the City shall directly or indirectly use or attempt to use the authority or influence of such officer or employee for the purpose of intimidating, threatening, coercing, directing or influencing any person with the intent of interfering with that person's duty to disclose alleged violations of City policy or local, State or Federal law.

This is just a summary of your obligations, for additional information please refer to policy 1.1.4, titled Non-Retaliation, in the City Policy Manual.

9. Discrimination and Harassment

City employees and officials shall not, in the performance of their duties, discriminate against any person on the basis of race, color, religion, national origin, ancestry, age, sex, gender, pregnancy, childbirth or related medical condition, sexual orientation, marital status, disability, medical condition and actual or perceived gender identity and they will reinforce the City of San Jose's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment.

This is just a summary of your obligations, for additional information please refer to policy 1.1.1, titled Discrimination and Harassment Policy, in the City Policy Manual.

VIOLATIONS OF THE CODE OF ETHICS

In addition to any other penalty as provided by law, employees who violate the Code of Ethics will be subject to disciplinary action, up to and including termination. The violation of this Code of Ethics by a City official, elected or appointed, constitutes official misconduct. For additional information, please refer to Title 12 of the San Jose Municipal Code and the City Council Censure Policy.

*Approved by the City Council
xxxxxxx, 2018*

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

Date

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Revised: xx/xx/2018
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Gift Policy**1.2.2****PURPOSE AND SCOPE**

The purpose of this policy is to establish policy and guidelines for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and all employees in their officially assigned duties and responsibilities.

POLICY

Elected officials and City employees shall not accept money or other considerations or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts, gratuities, or favors of any kind which might be perceived or interpreted as an attempt to influence their actions with respect to City business. Gifts may not be accepted unless they are done so in accordance with this policy.

For the purposes of this Policy, the term "gift" is used as defined in San Jose Municipal Code Chapter 12.08 and all exceptions in that Chapter also apply to this Policy except where otherwise provided in a more stringent departmental or administrative policy. Employees are advised to check with their departments for such a policy.

As provided in Chapter 12.08 of the San Jose Municipal Code, the term "gift" has the same meaning as under the Political Reform Act, commencing at California Government Code §§81000, et seq. The Political Reform Act provides the basic rule that a gift is a payment made by any person of anything of value, whether tangible or intangible, real or personal property, a good or service that provides a personal benefit to an official when the official does not provide full consideration for the value of the benefit received. A gift includes the forgiveness of a debt or obligation and a rebate or a discount in the price of anything of value unless the rebate or discount is offered in the ordinary course of business without regard to official status.

No officer or employee of the City may accept any gift, directly or indirectly, from a Restricted Source, except as provided in the San Jose Municipal Code Chapter 12.08. "Restricted Source" is defined as any individual, firm or entity whose interest or whose employer's or clients interest has been materially affected by the work of such officer or employee of the City within two years prior to the time the gift is given; or in the future could reasonably be foreseen to be materially affected by the work of such officer or employee of the City.

Section 12.08.020 provides that gifts include:

1.
~~1. Any rebate or discount in the price of any thing of value unless the rebate or discount is made in the regular course of business to members of the public.~~
2.
~~2. An officer's or employee's community property interest, if any, in a gift received by that individual's spouse.~~

Gift Policy**1.2.2**

~~3. The provision of travel, including transportation, accommodations and food, except as expressly permitted pursuant to Section 12.08.030.~~

As used in Chapter 12.08, ~~t~~the term "gift" does not include:

- ~~4. The acceptance or receipt of:~~
- ~~4.~~
- ~~4-A. Any gift, including meals and beverages, provided to an officer or employee in a business or social setting that has a value of fifty dollars or less, as long as the total value of all such gifts received from any Restricted Source does not exceed fifty dollars in any calendar year.~~
- ~~4.~~
- ~~4-B. Any gift that meets one of the exceptions under the Political Reform Act:~~
- ~~4.~~
- ~~1. Informational material as defined by 2 California Code of Regulations §18942.1.~~
 - ~~4.~~
 - ~~2. Any payment that is not used and that, pursuant to 2 California Code of Regulations §18941 is returned, donated, for which reimbursement is paid.~~
 - ~~3. A payment from: the official's spouse; child or step-child; parent; grandparent; grandchild; brother; sister; current or former parent-in-law, brother-in-law, or sister-in-law; nephew; niece; aunt or uncle; including grandnephew, grandniece, grand aunt, or grand uncle, or first cousin including first cousin once removed or the spouse, or former spouse, of any such person other than a former in-law, unless the donor is acting as an agent or intermediary for any person not identified in this paragraph.~~
 - ~~4-A campaign contribution required to be reported under Chapter 4 of the Political Reform Act.~~
 - ~~4.~~
 - ~~4.~~
 - ~~B. Any devise or inheritance.~~
 - ~~5.~~
 - ~~4.~~
 - ~~4-A personalized plaque or trophy valued at less than \$250.~~
 - ~~6.~~
 - ~~7. (A) The cost of home hospitality, as defined in 2 California Code of Regulations §18942.2, provided to an official by an individual in the individual's home when the individual is present, unless one of the following provisions applies:~~

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- i. Any part of the cost of the hospitality provided by the host is paid directly or reimbursed by another person.
- ii. Any person deducts any part of the cost of such hospitality as a business expense on any government tax return.
- iii. There is an understanding between the individual extending the hospitality and another person that any amount of compensation the individual receives from that person includes a portion to be utilized to provide gifts of hospitality in the individual's home.

(B) In determining the applicability of subparagraph (A), the following apply:

- i. The cost of providing hospitality does not include any part of the value or rental cost of the home nor does it include any depreciation value on the home where the hospitality is extended.
- ii. An official may presume that the cost of home hospitality is paid by the host unless the host discloses to the official, or it is clear from the surrounding circumstances at the time the hospitality is provided, that a person, other than the host, paid the cost of the hospitality.

8. (A) Benefits commonly exchanged between an official and an individual who is not a lobbyist who is registered to lobby the official's agency, on a holiday, birthday, or other occasions, including reciprocal exchanges as identified in subparagraph (B) below where benefits are commonly exchanged, to the extent that the value of the benefits exchanged is not substantially disproportionate and includes food, entertainment, and nominal benefits provided to guests at an event, by an honoree or another individual, other than a lobbyist, hosting the event.

(B) Reciprocal Exchanges made in a social relationship between an official and another individual, who is not a lobbyist who is registered to lobby the official's agency, with whom the official participates in repeated social events or activities such as lunches, dinners, rounds of golf, attendance at entertainment or sporting events, where the parties typically rotate payments on a continuing basis so that, over time, each party pays for approximately his or her share of the costs of the continuing activities, so long as the total value of payments received by the official within the calendar year is not substantially disproportionate to the amount paid by the official. If the official receives a disproportionate amount relative to what the official paid, the official has received a gift for the excess amount. This reciprocal exchange payment provision does not apply to any single payment that is equal to or greater than the amount specified in 2 California Code of Regulations §18940.2.

9. Leave credits, including vacation, sick leave, or compensatory time off, donated to the official in accordance with a bona fide catastrophic or similar emergency leave program established by the official's employer and available to all employees in the same job classification or position except for donations of cash.

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10. Payments received under a government agency program or a program established by a bona fide charitable organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code designed to provide disaster relief or food, shelter, or similar assistance to qualified recipients if the payments are available to members of the public without regard to official status.
11. Admission, where paid admission is required, food, and nominal items provided as part of the paid admission to those attending, to an official where the official makes a speech (as defined in 2 California Code of Regulations §18950 (b)(2)) is not a "payment" as defined in California Government Code §82044 so long as the admission is provided by the person who organizes the event. For purpose of this subdivision, nominal means an insignificant item typically purchased in large volume and provided for free as a means of advertisement at events, such as a pen, pencil, mouse pad, rubber duck, stress ball, note pad, or similar item.
12. Payments for campaign activities as specified in 2 California Code of Regulations §18950.3.
13. A ticket provided to an official and one guest of the official for his or her admission to a facility, event, show, or performance for an entertainment, amusement, recreational, or similar purpose at which the official performs a ceremonial role on behalf of his or her agency, as defined in 2 California Code of Regulations §18942.3, so long as the official's agency complies with the posting provisions set forth in 2 California Code of Regulations §18944.1, subdivision (f). Any official who attends the event as part of his or her job duties to assist the official who is performing the ceremonial role has not received a gift or income by attending the event.
14. A prize or award received in a manner not related to the official's status in a bona fide contest, competition, or game of chance. A prize or award that is not reported as a gift shall be reported as income unless the prize or award is received as a winning from the California State Lottery.
15. Benefits received as a guest attending a wedding or civil union so long as the benefits are substantially the same as the benefits received by the other guests attending the event.
16. Bereavement offerings typically provided in memory of and concurrent with the passing of a spouse, parent, child, or sibling or other relative of the official.
17. Acts of Neighborliness. A service performed, such as a loan of an item, an occasional needed ride, personal assistance in making a repair, bringing in the mail or feeding the cat while the official is away, and other similar acts of ordinary assistance consistent with polite behavior in a civilized society that would not normally be part of an economic transaction between like

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participants under similar circumstances.

18. (A) Bona Fide Date or Dating Relationship. Personal benefits commonly exchanged between people on a date or in a dating relationship, unless the individual providing the benefit to the official is listed under (D)(i-iii) below. If the benefit is from an individual listed under (D)(i-iii) the benefit is a gift that is not reportable or subject to limits but the aggregate value is subject to the Act's conflict of interest provisions if the value meets the amount specified in 2 California Code of Regulations §18940.2.

(B) Acts of Human Compassion. Payments provided to an official, or an official's family member, by an individual to offset family medical or living expenses that the official can no longer meet without private assistance because of an accident, illness, employment loss, death in the family, or other unexpected calamity; or to defray expenses associated with humanitarian efforts such as the adoption of an orphaned child, so long as the source of the donation is an individual who has a prior social relationship with the official of the type where it would be common to provide such assistance (such as a relative, long-term friend, neighbor, co-worker or former co-worker, member of the same local religious or other similar organization, etc.), or the payment is made without regard to official status under other circumstances in which it would be common to receive community outreach, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(C) A payment provided to an official by an individual with whom the official has a long term, close personal friendship unrelated to the official's position with the agency, unless the individual providing the benefit to the official is listed under (D)(i-iii) below.

(D) The limitations placed on the exceptions contained within this paragraph (18) apply to the following persons:

- i. A lobbyist, lobbying firm, lobbyist employer, or other person required to file reports under Chapter 6 (commencing with Section 86100) of the Act and who is registered to lobby the official's agency.
- ii. A person who has, or may reasonably foreseeably have, a contract, license, permit, or other entitlement for use pending before the official's agency, and for 12 months following the date a contract is signed or a final decision is rendered in the proceeding, if the official makes or participates in making a governmental decision, as defined in the Act's conflict of interest regulations (Regulation 18702 et seq.) regarding the contract, license, permit, or other entitlement for use.
- iii. A person, or an agent of a person, involved in a licensing or enforcement proceeding before a regulatory agency that employs the official and in which the official may reasonably foreseeably participate, or has participated, within 12 months of the time the gift is made.

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19. Any other payment not identified above, that would otherwise meet the definition of gift, where the payment is made by an individual who is not a lobbyist registered to lobby the official's agency, where it is clear that the gift was made because of an existing personal or business relationship unrelated to the official's position and there is no evidence whatsoever at the time the gift is made that the official makes or participates in the type of governmental decisions that may have a reasonably foreseeable material financial effect on the individual who would otherwise be the source of the gift.

The following gifts are exempt from the limitations on gifts described in California Government Code §89503:

1. Payments for transportation, lodging, and subsistence that are exempt from limits on gifts by California Government Code §89506.
2. Wedding gifts.

The promise, receipt, acceptance, and return of gifts are governed by the Political Reform Act. In addition, per the San Jose Municipal Code 12.08.120, a gift is not considered accepted or received under this policy if:

- A. It is treated as and remains the property of the City or the Successor Agency.
- B. It is received by an officer or designated employee in his or her official capacity or as a representative of the City or the Successor Agency, it is reported to the City Council or Successor Agency board, and the City Council or Successor Agency board, as applicable, approves of the official or designated employee retaining the gift.

~~—Campaign contributions which otherwise comply with Title 12 of the San José Municipal Code and which are required to be reported under Chapter 4 of the Political Reform Act of 1974 as amended.~~

- ~~2. Any devise or inheritance.~~

~~The exceptions in Chapter 12.08, Section 12.08.030 are included below.~~

~~Gifts which are acceptable are as follows:~~

- ~~A. —~~
- ~~A. Gifts with a value less than fifty dollars (\$50):~~

~~Any gift, including meals and beverages provided to an officer or employee in a business or social setting, that has a value less than fifty dollars (\$50), as long as the total value of all such gifts received from any one donor does not exceed fifty dollars (\$50) or more in any calendar year.~~

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Gift Policy**1.2.2**B. Information Material:

~~Informational material such as books, reports, pamphlets, calendars, or periodicals or reimbursement for any such expenses. Informational material does include provision of educational trips including transportation, accommodation and food.~~

C. Hospitality:

~~Gifts of hospitality involving food, beverages or occasional lodging provided to any officer or employee by an individual in such individual's primary residence.~~

D. Reciprocal Gifts:

~~Presents exchanged between any officer or designates employee and an individual, other than a lobbyist as defined in Chapter 12.12, on holidays, birthdays, baby showers, or similar occasions provided that the presents are not substantially disproportionate in value.~~

E. Panels and Seminars:

~~Free admission, food, beverages, and similar nominal benefits provided to an officer or employee at an event at which the officer or employee speaks, participates in a panel or seminar or performs a similar service, and reimbursement or advance for actual intrastate travel or for necessary accommodations provided directly in connection with such event.~~

F. Admission Given by Sponsor of an Event:

~~Admission to ceremonial, political, civic, cultural or community functions provided by a sponsor of the event for the personal use of the officer or employee.~~

~~For example, cultural events include theatrical productions and art exhibits; political event include political fundraisers.~~

~~1. Admission to regularly scheduled athletic event, such as tickets to professional sporting events, are not included as an exception to prohibited gifts.~~

~~2. A sponsor of an event shall not included individuals, persons or organizations whose sponsorship of the event is solely limited to funding or monetary support such as the purchase of tickets.~~

G. Employment Interview - Government Employer:

~~Transportation, accommodation, food and directly related expenses advanced or reimbursed by a governmental agency in connection with an employment~~

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~~interview, when an interview is conducted at least one hundred fifty (150) miles from San Jose and where the site of the employment will be at least the same distance from the City.~~

H. Employment Interview - Private Employer:

~~Transportation, accommodation, food and directly related expenses incurred in connection with an employment interview and a bonafide prospect of employment, when the expenses are advanced or reimbursed to an officer or employee by a potential employer, provided that the officer or employee has not made or participated in the making of a governmental decision materially affecting the financial interest of the potential employer during the twelve (12) months immediately preceding the time the expenses are incurred or the offer of employment is made, whichever is sooner.~~

I. Authorized Travel:

~~Transportation, accommodation, food and directly related expenses for any officer or employee which has been authorized by a majority of the City Council or Redevelopment Agency Board or which is pursuant to a written City or Redevelopment Agency policy for intrastate or interstate travel regardless of the source of payment.~~

J. City or Redevelopment Agency Business:

~~Transportation provided to an officer or employee by a contractor or other person doing business with the City or Redevelopment Agency, provided that such transportation is related to City or Redevelopment Agency business which is within the scope of employment or the duties of such officer or employee, and further provided that such transportation is not in excess of one hundred twenty-five (125) miles one way. Nothing in this subsection shall be interpreted to approve travel under subsection (I) above.~~

K. Flowers:

~~Flowers, plants or balloons, which are given on ceremonial occasion, to express condolences or congratulations, or to commemorate special occasions.~~

L. Prizes and Awards from Bona Fide Competitions:

~~A prize or award received shall be reported as a gift unless the prize or award is received in a bona fide competition not related to the recipient's status as a City or Redevelopment Agency employee. If reported as a gift, the prize or award must comply with the disclosure and disqualification requirement under the Political Reform Act of 1974 as amended.~~

M. Wedding Gifts:

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~~Wedding gifts from an individual other than a lobbyist as defined in Chapter 12.12.~~

Approved by the City Council
~~June 28, 2005~~, 2018

Approved for posting:

/s/ Jennifer Maguire
Assistant City Manager

Date

DRAFT

City of San José, California

COUNCIL POLICY

TITLE TITLE CODE OF ETHICS FOR OFFICIALS AND EMPLOYEES OF THE CITY OF SAN JOSE	PAGE 1 of 3	POLICY NUMBER 0-15
EFFECTIVE DATE August 19, 1980	REVISED DATE June 28, 2005	
APPROVED BY COUNCIL ACTION 8/19/1980, Res. No. 53699; 10/14/1980, Res. No. 53971; 3/23/1982, Res. No. 55371; 6/25/1991, Item 9(j), Res. No. 63171; 6/28/2005, Item 10.1(a1), Res. No. 72837		

PURPOSE AND SCOPE

In order to best serve the citizens and customers of the City of San José, the elected and appointed officials, and employees of the City must act individually and collectively to create a City government that is responsible, fair, honest and open. City employees and officials are expected to demonstrate the highest standards of personal integrity, honesty and conduct in all activities in order to inspire public confidence and trust in City employees.

As stated in the City Charter, "The citizens of San José expect and must receive the highest standard of ethics from all those in the public service. City officers and employees must be independent, impartial and responsible in the performance of their duties and accountable to the members of the public."

The purpose of this Code of Ethics is to establish policy and guidelines, reflecting expected values and behaviors for use by and applicable to elected and appointed City officials, City officers, including Board and Commission members, and employees. Individuals employed by the City under contractual agreement must also observe the provisions of this policy for the term of their contract or as the contract may stipulate.

For additional regulations regarding ethics please refer to Title 12 of the San José Municipal Code.

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Elected and appointed officials and employees of the City of San José at all levels are guardians of the public trust. City officials and employees are required to be impartial and responsible in the fulfillment of their duties. The citizens and customers of San José expect and must receive the highest standard of ethics from all those in public service, regardless of personal consideration.

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City officials and employees are obligated to uphold the Constitution of the United States and the Constitution of the State of California and to comply with Federal, State, and local laws and City policies. Recognizing the special responsibilities of serving the City and its citizens and customers, City officials and employees are required to maintain the highest standards of integrity and honesty, and they are expected to treat all members of the public and fellow City employees with respect, courtesy, concern and responsiveness. The conduct of City officials and employees in both their official and private affairs should be above reproach to assure that their City position is not used for personal gain.

2. Access to City Government, Services & Resources

The City of San José is committed to open and transparent government and strives to consistently meet the community's expectations by providing excellent service in a positive, timely, and transparent manner. City employees and officials are obligated to serve the public by reaching decisions and conducting activities in full view of the public in accordance with the Brown Act and the Consolidated Open Government and Ethics Resolution (Resolution #77135).

~~2.3.~~ General Rule with Respect to Conflicts of Interest

City employees and officials are expected to avoid any conflicts of interest. Further, employees should avoid the appearance of conflicts of interest in order to ensure that City decisions are made in an

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independent and impartial manner. All City officials, officers and employees are prohibited from making, participation in making, or attempting in any way to use his or her official position to influence a City decision in which the employee knows or has reason to know he or she has a financial interest as defined by law. For example, City employees and officials shall not make personal investments nor maintain any direct or indirect interest in enterprises, activities, or entities which they have or have reason to believe may be involved in decisions or recommendations to be made by them or persons under their supervision, or which may create a conflict between their private interests or may impair their independence of judgment in the accomplishment of their official duties. If, however, persons in the public service have financial interests in matters coming before them, or before the department in which they are employed, they shall remove themselves from making, participating in the making, or seeking to influence any decision regarding such matter. Employees who are designated in the City's Conflict of Interest Code, shall file the appropriate disclosure statements required under State Law.

A conflict of interest may arise when dealing with a current or prospective vendor, supplier, or other business. Please refer to Section 3 below and seek guidance from a supervisor or from the Employee Helpline at 535-8150.

3.4. **Acceptance of Favors, Gratuities and Gifts**

City employees and officials shall not accept money or other consideration or favors from anyone other than the City for the performance of an act which they would be required or expected to perform in the regular course of their duties; nor shall such persons accept any gifts as defined in the City's Gift Ordinance, gratuities or favors of any kind which be perceived or interpreted as an attempt to influence their actions with respect to City business.

This is just a summary of your obligations, for additional information regarding specific regulations on the acceptance of gifts; please refer to policy 2.02, titled Gift Policy in the City Policy Manual. Additionally, if there are any discrepancies between this Gift Policy and Title 12 of the San José Municipal Code, Title 12 of the San José Municipal Code supersedes.

4.5. **Use of Confidential Information**

City employees and officials shall not use confidential information acquired by or available to them in the course of their employment with the City for personal gain or for personal, non-City business related reasons. City employees and officials shall uphold the public's right to know, and in accordance with the Brown Act, uphold the public's right to know not only the decisions taken, but also the deliberations which shape public policies. Any employee or official, who is aware of a breach of confidentiality, is expected to bring forth that information to the appropriate officials in a timely manner.

5.6. **Use of City Employment and Facilities for Personal Gain**

City employees and officials shall not use City time, City funds or City facilities, equipment or supplies for personal use or personal gain or for campaign related political activities, nor shall they use or attempt to use their position to secure unwarranted privileges or exemptions for themselves or others.

This is just a summary of your obligations, for additional information please refer to policy 1.6.2, titled Personal Use of City Equipment, and 1.7.1, titled Use of E-Mail, Internet Services and Other Electronic Media, in the City Policy Manual.

6.7. **Outside Employment**

No employee shall engage in any work, employment or occupation outside City employment, which is detrimental to City service, which prevents or impedes the efficient performance of their duties in City employment, or which is in any way in conflict with their employment with the City. No employee shall engage in any work, employment or occupation outside City employment unless they have notified their department via an Outside Work Permit, and the permit has been approved by the Department Director.

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This is just a summary of your obligations, for additional information please refer to policy 1.2.3, titled Outside Employment Policy, in the City Policy Manual.

7-8. Discussion of Future Employment

All offers or discussions of offers to City employees of future employment outside City service must be reported immediately to the employee's supervisor whenever such discussions occur with, or when such offer is made by, any person, firm or organization presently dealing with the City concerning matters directly within the employee's current areas of decision-making responsibilities. It shall be within the supervisor's discretionary powers to relieve said employee from further decision-making responsibilities in relationship to said person, firm or organization if he or she determines that the offer of employment or discussions of an offer of employment would impair the employee's independence or judgment or could be construed by others as a bid for favorable treatment.

8-9. Reporting of Improper Activities

The City of San José has a responsibility to conduct its affairs ethically and in compliance with the law. City employees and persons in City service are expected and encouraged to promptly raise questions and concerns regarding possible violations of City policy or local, State or Federal law with his/her immediate supervisor or another management employee within the employee's department. Employees may also call the Employee Helpline at 535-8150 or the Fraud and Audit Hotline at 535-8200.

It is the policy of the City to prohibit the taking of any adverse employment action against those who in good faith report or participate in investigations into complaints of alleged violations of City policy or local, State or Federal law in retaliation for that reporting or participation. No officer or employee of the City shall directly or indirectly use or attempt to use the authority or influence of such officer or employee for the purpose of intimidating, threatening, coercing, directing or influencing any person with the intent of interfering with that person's duty to disclose alleged violations of City policy or local, State or Federal law.

This is just a summary of your obligations, for additional information please refer to Policy 1.1.4, titled Non-Retaliation, in the City Policy Manual.

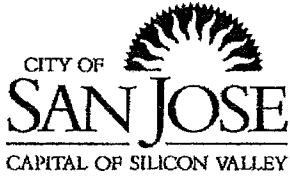
9-10. Discrimination and Harassment

City employees and officials shall not, in the performance of their duties, discriminate against any person on the basis of race, color, religion, national origin, ancestry, age, sex, gender, pregnancy, childbirth or related medical condition, sexual orientation, marital status, disability, medical condition and actual or perceived gender identity and they will reinforce the City of San José's commitment to equal employment opportunity and a work environment free of discrimination and harassment, including sexual harassment.

This is just a summary of your obligations, for additional information please refer to policy 1.1.1, titled Discrimination and Harassment Policy, in the City Policy Manual.

VIOLATIONS OF THE CODE OF ETHICS

In addition to any other penalty as provided by law, employees who violate the Code of Ethics will be subject to disciplinary action, up to and including termination. The violation of this Code of Ethics by a City official, elected or appointed, constitutes official misconduct. For additional information, please refer to Title 12 of the San José Municipal Code and the City Council Censure Policy.



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Jennifer Schembri

SUBJECT: See Below

DATE: April 10, 2018

Approved

Date

**SUBJECT: APPROVAL OF REVISED CODE OF ETHICS POLICY, GIFT POLICY,
AND COUNCIL POLICY 0-15**

RECOMMENDATION

It is recommended that the San Jose City Council adopt a resolution:

1. Approving the revised Code of Ethics Policy;
2. Approving the revised Gift Policy; and
3. Approving the revised Council Policy 0-15.

OUTCOME

This action will result in updated ethics and gift policies that will be applicable and accessible to all City employees as part of the City Administrative Policy Manual, and an updated Council Policy 0-15, Code of Ethics for Officials and Employees of the City of San Jose.

BACKGROUND

Gift Policy

In the *Mayor's 2015 Biennial Review and Recommendation*, the Board of Fair Campaign and Political Practices (BFCPP) was directed to recommend revisions to the Gift Ordinance to better align with the State rules and simplify the compliance with conflicting rules. In March 2017, BFCPP recommended changes to the Gift Ordinance that were presented for Council consideration at the June 20, 2017 meeting.

At the June 20, 2017, meeting, the Council adopted Councilmember Diep's proposal to repeal the Gift Ordinance and follow only State law related to gifts. When the repeal ordinance came before the Council for final adoption on June 27, 2017, the City Council deferred the item to August 15, 2017, for further discussion.

At the August 15, 2017 meeting, the Council directed the City Attorney's Office to draft an ordinance amending Title 12 of the San Jose Municipal Code to align the Gift Ordinance with

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the gift regulations under the Political Reform Act, but maintain the fifty-dollar (\$50) gift limit, which the Council approved on October 24, 2017.

The proposed revisions to the Gift Policy incorporates the Council approved amendments to the Gift Ordinance.

Code of Ethics

In 2006, the City Council formed the Sunshine Reform Task Force to promote open, accessible, and inclusive government. The Task Force proposed changes in how the City discloses information discussed at public and closed session meetings and provides access to public information and records. In 2008 and 2009, the Council adopted nearly all the proposed changes, and in 2014, consolidated these changes into a new Open Government Ordinance. The Council also approved a resolution to consolidate various procedures and policies into new Consolidated Open Government and Ethics Provisions.

In August 2017, the City Auditor conducted an Open Government Audit to assess progress towards meeting the City's open government goals as proposed by the Sunshine Reform Task, which was codified by the City Council in 2014. The City Auditor noted in their audit that while the Code of Ethics states "*City employees and officials shall uphold the public's right to know... in accordance with the Brown Act...*" it does not reference the City's open government provisions and recommend to ensure that open government becomes an integrated part of the City's business, Administration should reference the Consolidated Open Government and Ethics Resolution in the City's Code of Ethics.

The proposed revisions to the Code of Ethics Policy and Council Policy 0-15 incorporates the Auditor's recommendations to reference the Consolidated Open Government and Ethics Resolution.

Upon City Council approval, the policies will be revised in the City Administrative Policy Manual and Council Policy Manual. Attached for reference are the proposed policies with track changes.

ANALYSIS

The current Gift Policy applies to all elected and appointed City officials, City officers, including Board and Commission members, and employees, and was last revised on June 28, 2005. The revised Gift Policy adopts the provisions in the amended Gift Ordinance under the San Jose Municipal Code Chapter 12.08, which modifies the exceptions for allowable gifts by incorporating the exceptions under the Political Reform Act while maintaining a \$50.00 gift limit. The revised Gift Policy also includes updated definitions and descriptions to match the Gift Ordinance.

The current Code of Ethics Policy applies to all elected and appointed officials, and employees and was last revised June 28, 2005. The revised Code of Ethics Policy incorporates the Auditor's recommendation by informing officials and employees of their obligation to comply with the Consolidated Open Government and Ethics Resolution, in addition to the Brown Act.

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Council Policy 0-15 currently mirrors the City's Code of Ethics Policy, including the revisions approved by the City Council on June 25, 2008. Since the City Council approved the Auditor's recommendation to reference the Consolidated Open Government and Ethics Resolution, which also applies to elected officials, Council Policy 0-15 should also be revised to incorporate the proposed language in the revised Code of Ethics to maintain uniformity.

EVALUATION AND FOLLOW-UP

There is no anticipated City Council follow-up at this time.

PUBLIC OUTREACH/INTEREST

This item will be posted on the City's website for the April 24, 2018 City Council Agenda.

COORDINATION

This memorandum has been coordinated with the City Clerk and the City Attorney's Office.

COMMISSION RECOMMENDATION/INPUT

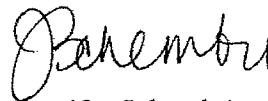
This was not coordinated with any board or commission.

COST SUMMARY/IMPLICATIONS

There are no anticipated costs associated with the adoption of these policies.

CEQA

Not a project; File No. PP17-008, General Procedure or Policy Making.



Jennifer Schembri
Director of Employee Relations

For questions please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8154.